IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION APPLICATION NO. 206 OF 2006

M/s. Reasonable Advertising Pvt. Ltd.)
a Company incorporated under the provisions of the)
Companies Act, 1956, having its registered office at)
G-4, Richa Industrial Estate, B-29, Off. New Link Road,)
Nr. Monginis Road, Andheri (West), Mumbai-400 053,)
through its Director Mr. Ashok Wadhwa)... Applicant

Versus

1. M/s. Media Masters,)
a partnership firm having its registered office)
at No. 825, Das Commercial Complex,)
Kanakpura Road, 7th Block, Jaynagar,)
Bangalore-8.)

2. Mr. Ravindra H.P.)
Partner of M/s. Media Masters,)
having his place of business at 825, Das)
Commercial Complex, Kanakpura Road,)
7th Block, Jaynagar, Bangalore-82)..Respondents

Mr. A.A. Joshi for the applicant
Ms. Suchitra Kamble, instructed by Ms. Sophia Pinto for the respondents.

CORAM; SWATANTER KUMAR, C.J.

Judgment reserved on : May 04, 2007
Judgment pronounced on : June 21, 2007

JUDGMENT:

The applicant is a Company registered under the provisions of the Companies Act, 1956, with its registered office at G-4, Richa Industrial Estate, B-29, Off. New Link Road, Near Monginis Road, Andheri (West), Mumbai-400 054. They entered into an agreement dated 19th May, 2006, with

the first respondent partnership concern at Mumbai. In terms of the said agreement, the applicant was allotted rights to market and sell the time slot available to the respondents in respect of serials on televisions and on the terms and conditions stated in the agreement. This agreement also contained an arbitration clause which reads as under:

> "Any disputes or differences arising out of or pertaining to this agreement shall first be resolved by the parties through negotiation failing which such dispute/differences shall be subject to the Arbitration appointed mutually by both the parties. Such proceedings shall be conducted at Mumbai in accordance with the provisions of Arbitration and Conciliation Act, 1996, or any other law for the time being in force. The award passed by the Arbitrator in pursuance of such arbitration proceedings shall be binding upon both the parties hereto. Any such disputes/differences being the subject matter of such arbitration proceedings and any legal proceedings shall be subject to the jurisdiction of the Courts in Mumbai only."

2. Vide letter dated 28th July, 2006, the applicant terminated the agreement and called upon the respondents to pay a sum of Rs.38,25,478/- and other amounts as claimed therein. This liability was denied by the respondents vide their letter dated 10th August, 2006. Resultantly, disputes and differences arose between the parties which could not be resolved despite exchange of correspondence between the parties as well as notice being served through their advocates. Vide letter dated 14th September, 2006, the applicant invoked the arbitration clause of the agreement dated 19th May, 2006, and named Shri Pravin Agarwal as the Arbitrator. The respondents did not agree for the appointment of

the said Arbitrator as the sole Arbitrator and proposed name of one Shri Ganesh as an Arbitrator. As the name of the Arbitrator suggested by the parties to each other was not acceptable, the applicant has filed this application under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act").

3. Despite notice, no reply has been filed on behalf of the respondents. However, during the course of arguments, and despite the language of the arbitration clause, the learned counsel appearing for the parties agree that they would be prepared to accept the appointment of a sole arbitrator, if the same is ordered by the Court itself. In view of this, hardly any controversy remains to be settled between the parties. The parties have admitted the arbitration clause, existence of disputes and even their willingness to refer the same to a sole Arbitrator. However, the only grievance raised on behalf of the non-applicants is that they are not in a position to bear the expenses of an Arbitrator, particularly a retired Judge of this Court, as they have to come from outstation to contest the arbitration proceedings which are to be held at Mumbai. It is also submitted on their behalf that they can bear the expenses of their own Arbitrator as the fees would be quite less. This submission has no merit. However, the learned counsel appearing for the applicant very fairly stated that at the first instance they would pay the fees of the Arbitrator in its entirety. However, the same should be treated as costs for the proceedings and, in any event, ultimately the respondents should be directed to share the fees of the Arbitrator. I find the submission of the applicant to be quite reasonable and is in accordance with law. No prejudice

would be caused to the respondents as ultimately they are expected to bear the costs of the arbitration proceedings and cannot contest the proceedings at the cost of the applicant.

4. In view of the above, this application is allowed and as per the joint request of the parties, Hon'ble Mr. Justice D.G. Deshpande, (Retd.) is appointed as a sole Arbitrator with a further direction that initially the fee of the Arbitrator shall be borne by the applicant but the same would be costs in the arbitration proceedings to be shared by the respondents unless otherwise directed by the Arbitrator. It is expected that the arbitration proceedings shall be concluded expeditiously. The parties are left to bear their own costs.

CHIEF JUSTICE